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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,347	08/05/2003	Ulrich Johannes Haas	PH/5-70108A	8812
26748	7590	09/18/2006	EXAMINER	
SYNGENTA CROP PROTECTION, INC. PATENT AND TRADEMARK DEPARTMENT 410 SWING ROAD GREENSBORO, NC 27409			STITZEL, DAVID PAUL	
			ART UNIT	PAPER NUMBER
			1616	

DATE MAILED: 09/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/634,347	HAAS, ULRICH JOHANNES	
	Examiner	Art Unit	
	David P. Stitzel, Esq.	1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 2-10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. <u>9/5/06</u> . |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/06/03; 10/12/04; 4/11/06</u> . | 6) <input type="checkbox"/> Other: ____. |

OFFICIAL ACTION

Restriction/Election

Restriction to one of the following inventions is required under 35 U.S.C. § 121:

- I. Claim 1 is drawn to a herbicidal composition comprising a mixture of: (1) a compound of formula I; and (2) one or more compounds selected from the group including, but not limited to, glyphosate and explicitly enumerated salts thereof, as classified in class 504, subclass 128.
- II. Claims 2-4 are drawn to a method of controlling undesired plant growth in crops of useful plants comprising applying to said crops a herbicidal composition comprising a mixture of: (1) a compound of formula I; and (2) one or more compounds selected from the group including, but not limited to, glyphosate and explicitly enumerated salts thereof, as classified in class 504, subclass 127.
- III. Claim 5 is drawn to a herbicidal composition comprising a mixture of: (1) a compound of formula I; (2) one or more compounds selected from the group including, but not limited to, glyphosate and explicitly enumerated salts thereof; and (3) a compound of formula 3, as classified in class 504, subclass 255.
- IV. Claims 6-8 are drawn to a method of controlling undesired plant growth in crops of useful plants comprising applying to said crops a herbicidal composition comprising a mixture of: (1) a compound of formula I; (2) one or more compounds selected from the group including, but not limited to, glyphosate and explicitly enumerated salts thereof; and (3) a compound of formula 3, as classified in class 504, subclass 254.
- V. Claim 9 is drawn to a herbicidal composition comprising a mixture of: (1) a compound of formula I; and (2) a compound of formula 3, as classified in class 504, subclass 240.

VI. Claims 6-8 are drawn to a method of controlling undesired plant growth in crops of useful plants comprising applying to said crops a herbicidal composition comprising a mixture of: (1) a compound of formula I; and (2) a compound of formula 3, as classified in class 504, subclass 239.

1. Inventions I and II are related as a product and a method of using said product, respectively. The inventions can be shown to be distinct if either or both of the following can be shown that: (1) the method of using the product as claimed can be practiced with another materially different product; or (2) the product as claimed can be used by another method that is materially different from the instantly claimed method of using said product. See MPEP § 806.05(h). In the instant case, a product as claimed in Invention I can be used by another method that is materially different from the method claimed in Invention II. For example, as opposed to using said composition for contacting a plant as claimed in Invention II, said composition, as claimed in Invention I, may alternatively be used for inhibiting the proliferation of fungus.

Inventions I and III are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that: (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability; and (2) the subcombination has utility by itself or in other combinations. See MPEP § 806.05(c). In the instant case, the combination as claimed in Invention I does not require the particulars of the subcombination as claimed Invention III because the composition of Invention I does not require the compound of formula 3 of Invention III for patentability. The subcombination of Invention III has separate utility such as an algicide and a biocide for treating wastewater.

Inventions III and IV are related as a product and a method of using said product, respectively. The inventions can be shown to be distinct if either or both of the following can be shown that: (1) the method of using the product as claimed can be practiced with another materially different product; or (2) the product as claimed can be used by another method that is materially different from the instantly claimed method of using said product. See MPEP § 806.05(h). In the instant case, a product as claimed in Invention III can be used by another method that is materially different from the method claimed in Invention IV. For example, as opposed to using said composition for contacting a plant as claimed in Invention IV, said composition, as claimed in Invention III, may alternatively be used as an algicide and a biocide for treating wastewater.

Inventions V and III are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that: (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability; and (2) the subcombination has utility by itself or in other combinations. See MPEP § 806.05(c). In the instant case, the combination as claimed in Invention V does not require the particulars of the subcombination as claimed Invention III because the composition of Invention V does not require the glyphosate and explicitly enumerated salts thereof of Invention III for patentability. The subcombination of Invention III has separate utility such as an algicide and a biocide for treating wastewater.

Inventions V and VI are related as a product and a method of using said product, respectively. The inventions can be shown to be distinct if either or both of the following can be shown that: (1) the method of using the product as claimed can be practiced with another materially different product; or (2) the product as claimed can be used by another method that is materially different from the instantly claimed method of using said product. See MPEP § 806.05(h). In the instant case, a product as claimed in Invention V can be used by another method that is materially different from the method

claimed in Invention VI. For example, as opposed to using said composition for contacting a plant as claimed in Invention VI, said composition, as claimed in Invention V, may alternatively be used as a light stabilizer and stain blocking agent for preventing yellowing of a polyamide fabric.

Inventions V and I are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that: (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability; and (2) the subcombination has utility by itself or in other combinations. See MPEP § 806.05(c). In the instant case, the combination as claimed in Invention V does not require the particulars of the subcombination as claimed Invention I because the composition of Invention V does not require the glyphosate and explicitly enumerated salts thereof of Invention I for patentability. The subcombination of Invention I has separate utility such as inhibiting the proliferation of fungus.

Because these inventions are independent and distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, the prior art search required for each respective invention would be divergent, thereby causing an undue search burden. As a result, restriction for examination purposes as indicated is proper. Applicant is therefore required under 35 U.S.C. § 121 to elect a single invention for prosecution on the merits.

2. Claims 1 and 5 are generic to a plurality of disclosed patentably distinct species of one or more compounds selected from an extensive Markush group, which includes, but is not limited to, glyphosate and explicitly enumerated salts thereof. The disclosed species within said extensive Markush group are patentably distinct, each from the other, because they possess different molecular structures, as well as different physicochemical properties. Therefore, restriction for examination purposes as indicated is proper.

Even though this requirement is traversed, in the event that Applicants elect Invention I or Invention III for prosecution on the merits, Applicants are further required under 35 U.S.C. § 121 to elect, for search purposes only, a single disclosed patentably distinct species of said one or more compounds (i.e., glyphosate and explicitly enumerated salts thereof) for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held allowable. Currently, claims 1 and 5 are generic. In addition to including a listing of all claims, as well as any claims subsequently added thereto, which are readable upon the elected species, Applicants should also include a chemical structure or a molecular formula of the elected compound, if a chemical structure or a molecular formula of said compound is not already contained within the instant specification. If Applicants are unable to provide the chemical structure or the molecular formula of said compound, the CAS (Chemical Abstract Service) number assigned to said compound will suffice.

3. Claims 5 and 9 are generic to a plurality of disclosed patentably distinct species of a compound of formula 3, which includes, but is not limited to, 4,6-dichloro-2-phenylpyrimidine. The disclosed species within said extensive Markush group are patentably distinct, each from the other, because they possess different molecular structures, as well as different physicochemical properties. Therefore, restriction for examination purposes as indicated is proper.

Even though this requirement is traversed, in the event that Applicants elect Invention III or Invention V for prosecution on the merits, Applicants are further required under 35 U.S.C. § 121 to elect, for search purposes only, a single disclosed patentably distinct species of said compound of formula 3 (i.e., 4,6-dichloro-2-phenylpyrimidine) for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held allowable. Currently, claims 5 and 9 are generic. In addition to including a listing of all claims, as well as any claims subsequently added thereto, which

are readable upon the elected species, Applicants should also include a chemical structure or a molecular formula of the elected compound, if a chemical structure or a molecular formula of said compound is not already contained within the instant specification. If Applicants are unable to provide the chemical structure or the molecular formula of said compound, the CAS (Chemical Abstract Service) number assigned to said compound will suffice.

Conclusion to Restriction Requirement

The Examiner has required restriction between product and methods of using claims. Where Applicant elects claims directed to a product, and the product claim is subsequently found allowable, withdrawn methods of using claims that depend from or otherwise include all the limitations of the allowable product claim will be rejoined in accordance with the provisions of MPEP § 821.04. Methods of using claims that depend from or otherwise include all the limitations of the patentable product claim will be entered as a matter of right if the amendment is presented prior to final rejection or allowance, whichever is earlier.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined methods of using claims will be withdrawn, and the rejoined methods of using claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. §§ 101, 102, 103 and 112. Until an elected product claim is found allowable, an otherwise proper restriction requirement between product claims and methods of using claims may be maintained. Withdrawn methods of using claims that are not commensurate in scope with an allowed product claim will not be rejoined. See "Guidance on Treatment of Product and Process Claims in light of *In re Ochiai*, *In re Brouwer* and 35 U.S.C. § 103(b)," 1184 O.G. 86 (March 26, 1996). Additionally, in order to retain the right to rejoinder in accordance with the above policy, Applicant is advised that the methods of using

claims should be amended during prosecution either to maintain dependency on the product claims or to otherwise include the limitations of the product claims. Failure to do so may result in a loss of the right to rejoinder. Further, note that the prohibition against double patenting rejections of 35 U.S.C. § 121 does not apply where the restriction requirement is withdrawn by the Examiner before the patent issues. See MPEP § 804.01.

Applicants are advised that in the event that Invention I or Invention III is elected for prosecution on the merits, a fully responsive reply to this requirement must include an explicit identification of a single disclosed patentably distinct species of said one or more compounds (i.e., glyphosate and explicitly enumerated salts thereof) that is elected consonant with this requirement, and a listing of all claims, including any claims subsequently added thereto, which are readable upon the elected species. An argument that a claim is allowable or that claims are not generic is considered nonresponsive unless accompanied by an explicit election of a specific species. See 37 C.F.R. § 1.143.

Applicants are also advised that in the event that Invention III or Invention V is elected for prosecution on the merits, a fully responsive reply to this requirement must also include an explicit identification of a single disclosed patentably distinct species of said compound of formula 3 (i.e., 4,6-dichloro-2-phenylpyrimidine) that is elected consonant with this requirement, and a listing of all claims, including any claims subsequently added thereto, which are readable upon the elected species. An argument that a claim is allowable or that claims are not generic is considered nonresponsive unless accompanied by an explicit election of a specific species. See 37 C.F.R. § 1.143.

Should Applicant traverse on the ground that the species are not patentably distinct, Applicant should submit evidence or identify such evidence now of record showing the species and subspecies to be obvious variants over one another or clearly admit on the record that this is the case. In either

instance, if the Examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. § 103(a) of the other inventions.

If claims are added after the election, Applicant must explicitly indicate which claims are readable upon the elected species. See MPEP § 809.02(a). Amendments submitted after final rejection are governed by 37 CFR 1.116, whereas amendments submitted after allowance are governed by 37 CFR 1.312.

Election & Telephone Interview Summary

Pursuant to a telephone interview held with the attorney of record, namely Mr. Thomas Hamilton, Esq., on Tuesday, September 5, 2006, at approximately 10:30 AM EST, an election was made *with traverse* to prosecute: Invention I encompassing claim 1; and glyphosate and explicitly enumerated salts thereof as the single disclosed patentably distinct species of said one or more compounds. As a result and pursuant to 37 CFR § 1.142(b), claims 2-10 are withdrawn from further consideration as being directed to a non-elected invention.

Status of Claims

Claims 2-10 are withdrawn from consideration as being directed to a non-elected invention. Pursuant to the aforementioned election of Invention I, claim 1 is examined herein on the merits for patentability.

Nonstatutory Double Patenting

A nonstatutory double patenting rejection of the “obviousness-type” is based on a judicially created doctrine grounded in public policy so as to prevent not only the unjustified or improper timewise extension of the “right to exclude” granted by a patent, but also possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761

(CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969); *In re White*, 405 F.2d 904, 160 USPQ 417 (CCPA 1969); *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968); and *In re Sarett*, 327 F.2d 1005, 140 USPQ 474 (CCPA 1964).

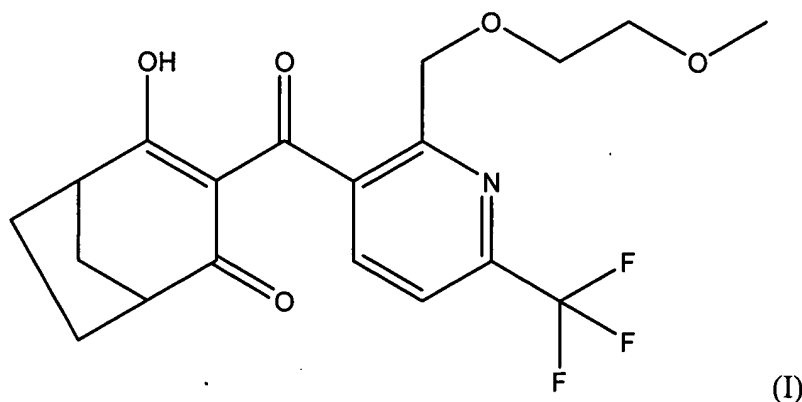
A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned or assigned with this application. See 37 CFR 1.130(b). Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

When considering whether the invention defined in a claim of an application is an obvious variation of the invention defined in the claim of a patent, the disclosure of the patent may not be used as prior art. See MPEP § 804. However, this does not mean that one is absolutely precluded from all use of the patent disclosure. See MPEP § 804. For example, the specification can always be used as a dictionary to learn the meaning of a term in the patent claim. *In re Boylan*, 392 F.2d 1017, 157 USPQ 370 (CCPA 1968). Furthermore, *those portions of the specification which provide support for the patent claims may also be examined and considered* when addressing the issue of whether a claim in the application defines an obvious variation of an invention claimed in the patent. *In re Vogel*, 422 F.2d 438, 441-442, 164 USPQ 619, 622 (CCPA 1970). The court in *Vogel* stated that one must first “determine how much of the patent disclosure pertains to the invention claimed in the patent” because only “[t]his portion of the specification supports the patent claims and may be considered.” The court in *Vogel* also pointed out that “this use of the disclosure is not in contravention of the cases forbidding

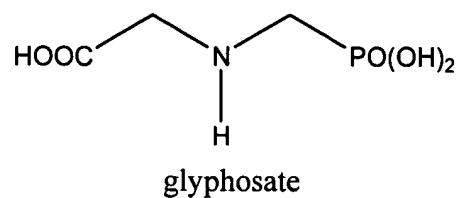
its use as prior art, nor is it applying the patent as a reference under 35 U.S.C. § 103, since only the disclosure of the invention claimed in the patent may be examined.”

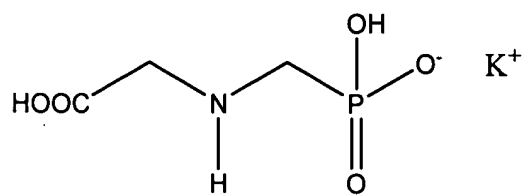
1. Claim 1 of the instant application is rejected under the judicially created doctrine of non-statutory obviousness-type double patenting as being unpatentable over conflicting claims 1 and 5 of U.S. Patent 6,890,885 (hereinafter the Rüegg '885 patent).

More specifically, claim 1 of the instant application is directed to a selectively herbicidal composition comprising as an active ingredient, a mixture of: (1) a herbicidally effective amount of a compound of formula I, as illustrated in greater detail hereinbelow:

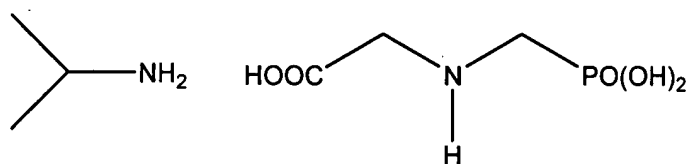


or an agronomically acceptable salt thereof; and (2) a synergistically effective amount of one or more compounds selected from the group consisting of: glyphosate, glyphosate-potassium, glyphosate-isopropylammonium, glyphosate-sodium, glyphosate-trimesium, glyphosate-ammonium, and glyphosate-diammonium, as illustrated in greater detail hereinbelow:

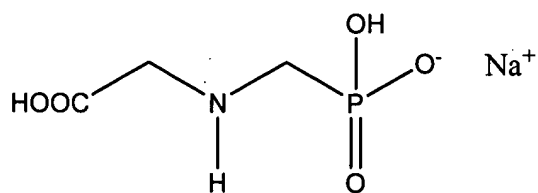




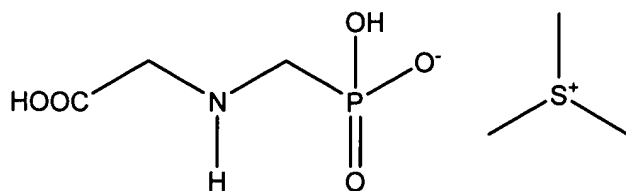
glyphosate-potassium



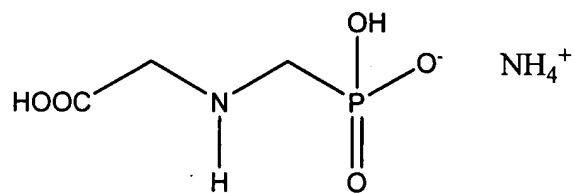
glyphosate-isopropylammonium



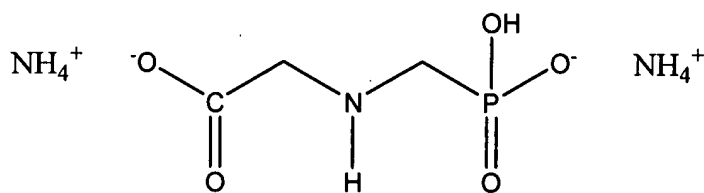
glyphosate-sodium



glyphosate-trimesium

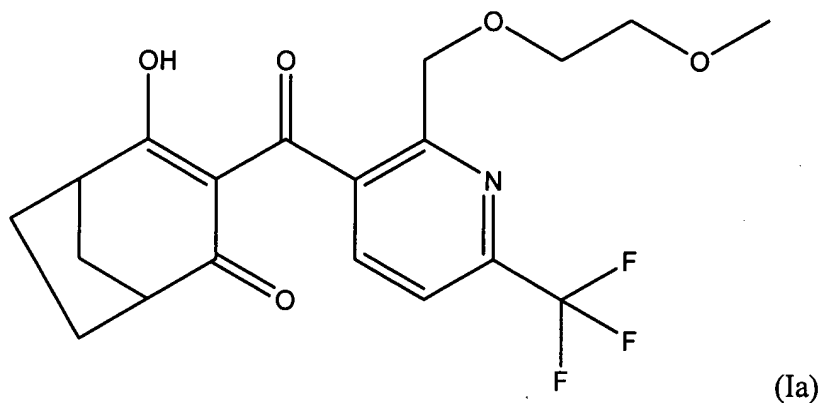


glyphosate-ammonium



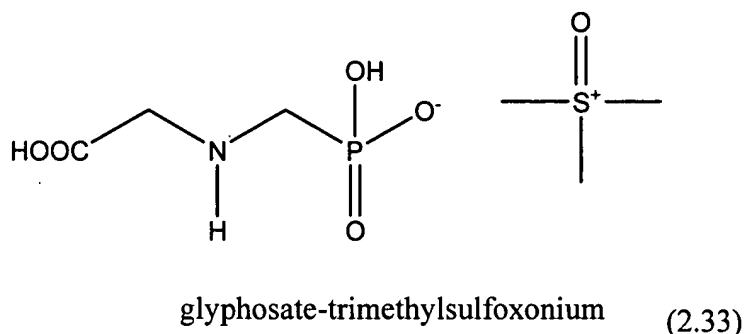
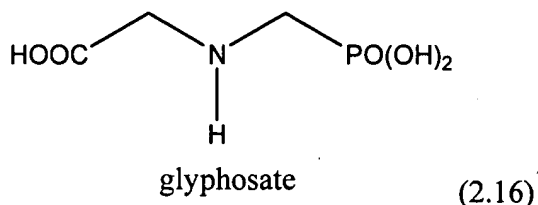
glyphosate-diammonium

Claims 1 and 5 of the conflicting Rüegg '885 patent are directed to a herbicidally selective composition comprising as an active ingredient, a mixture of: (1) a herbicidally effective amount of a compound of formula Ia*, as illustrated in greater detail hereinbelow:



(Ia)

or an agronomically acceptable salt thereof; and (2) a synergistically effective amount of one or more compounds selected from a compound of formula 2.16, namely glyphosate, and/or a compound of formula 2.33, namely glyphosate-trimethylsulfoxonium, as illustrated in greater detail hereinbelow:



*It should be mentioned however that the compound of formula Ia, as recited within claim 1 of the conflicting Rüegg '885 patent, contains a typographical error (which has not yet been corrected via a certificate of correction as of the mailing date of the instant Official Action) in that a nitrogen is missing within the aromatic ring of said compound of formula Ia thereby incorrectly reciting a benzene ring, as opposed to a pyridine ring, which should alternatively be recited as evidenced in the supporting specification (see e.g., abstract; column 1, lines 15-24 and 40-50; column 24, lines 34-45; column 177, lines 50-66, Table 19; column 179, lines 1-20, Table 19 continued).

As a result, although claim 1 of the instant application is not identical to claims 1 and 5 of the conflicting Rüegg '885 patent, the aforementioned claims are not patentably distinct each from the other because said claims are substantially overlapping in scope as discussed hereinabove.

Claim Rejections - 35 U.S.C. § 112, First Paragraph

The following is a quotation of the first paragraph of 35 U.S.C. § 112, which forms the basis of the claim rejections as set forth under this particular section of the Official Action:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 1 is rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The aforementioned claim contains subject matter that was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. More specifically, claim 1 of the instant application broadly recites a selectively herbicidal composition comprising as an active ingredient, a mixture of a herbicidally effective amount of a compound of formula I, or an agronomically acceptable salt thereof, and a *synergistically effective amount* of one or more compounds selected from the group consisting of: glyphosate, glyphosate-potassium, glyphosate-isopropylammonium, glyphosate-sodium, glyphosate-trimesium, glyphosate-ammonium, and glyphosate-diammonium. Although the instant specification generally discloses a mixture of a compound of formula I, or an agronomically acceptable salt thereof, and one or more compounds selected from the group consisting of glyphosate and derivatives thereof, wherein said mixture is in a ratio of 1:2000 to 2000:1, and more specifically from 200:1 to 1:200; said glyphosate and derivatives thereof are present in a quite lengthy laundry list of additional said one or more compounds, while the instant specification appears to be utterly devoid of even a scintilla of scientific experimental data illustrating that the aforementioned mixture does in fact exhibit synergism and at what particular ratios synergism exists. Therefore, not only does claim 1 contain subject matter that was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention, but also one of ordinary

skill in the art would be required to conduct an undue amount of experimentation to determine whether said mixture does in fact exhibit synergism and at what specific ratios synergism exists.

Claim Rejections - 35 U.S.C. § 102

The following are quotations of the appropriate paragraphs of 35 U.S.C. § 102, which form the basis of the anticipation rejections as set forth under this particular section of the Official Action:

A person shall be entitled to a patent unless –

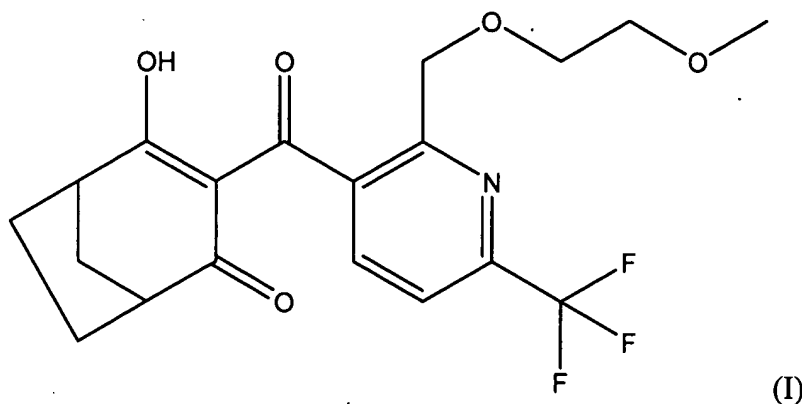
(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

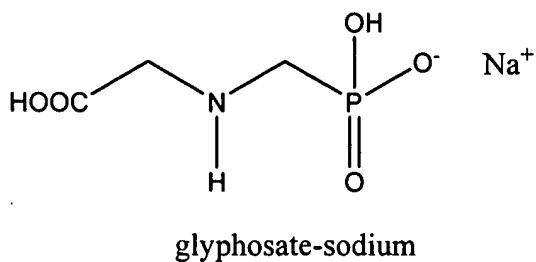
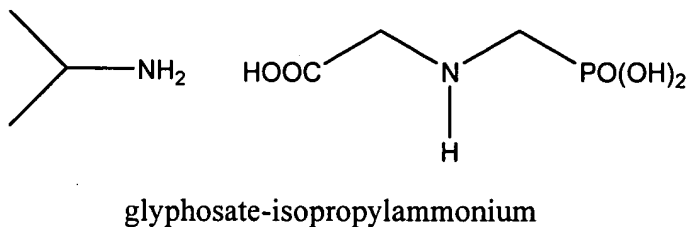
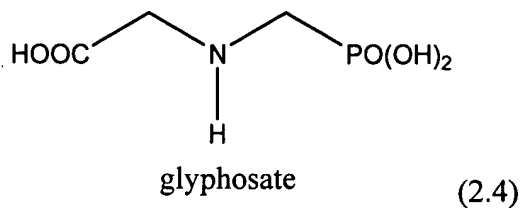
(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

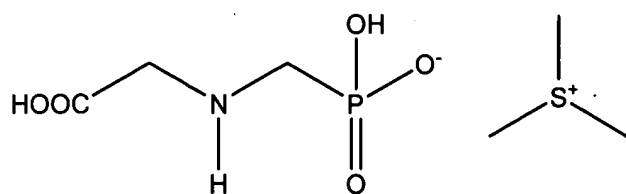
1. Claim 1 is rejected under 35 U.S.C. §§ 102 (a) and (e) as being anticipated by International Patent Application Publication WO03/047344A1 (hereinafter the Rüegg '344 publication).

With respect to claim 1 of the instant application, the Rüegg '344 publication discloses a synergistic herbicidal composition for selective weed control in crops of useful plants, which include, but are not limited to, maize and cereal, wherein said synergistic herbicidal composition comprises, as an active ingredient, a mixture of: (1) a herbicidally effective amount of a compound of formula I, as illustrated in greater detail hereinbelow:

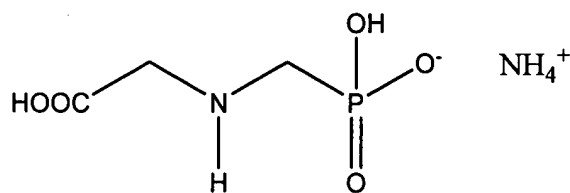


or an agronomically tolerable salt thereof; and (2) a synergistically effective amount of one or more compounds selected from a compound of formula 2.4, namely glyphosate, and/or various salts thereof, including glyphosate-isopropylammonium, glyphosate-sodium, glyphosate-trimesium, and glyphosate-ammonium, as illustrated in greater detail hereinbelow:





glyphosate-trimesium

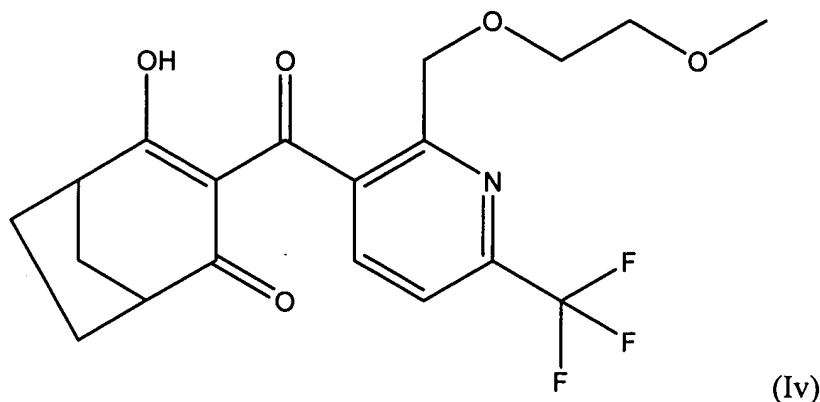


glyphosate-ammonium

(abstract; page 1 in its entirety; page 2, lines 1, 2, and paragraph reference a compound of formula 2.4; page 6, lines 28-32; page 7, lines 1-5).

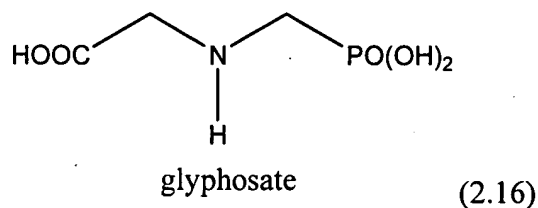
2. Claim 1 is rejected under 35 U.S.C. § 102(b) as being anticipated by International Patent Application Publication WO01/54501A2 (hereinafter the Rüegg '501 publication).

With respect to claim 1 of the instant application, the Rüegg '501 publication discloses a synergistic herbicidal composition (abstract) for selective weed control in crops of useful plants, which include, but are not limited to, maize and cereal (page 1, lines 1-4; page 26, lines 16-26), wherein said synergistic herbicidal composition comprises, as an active ingredient, a mixture of: (1) a herbicidally effective amount of a compound of formula Iv (page 200, Table 19), as illustrated in greater detail hereinbelow:

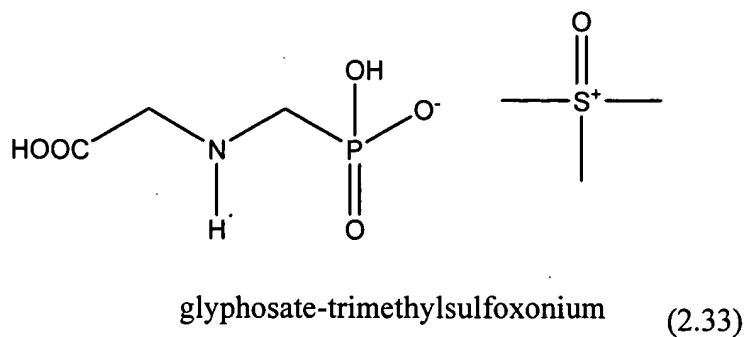


(Iv)

or an agronomically tolerable salt thereof (page 11, line 25); and (2) a synergistically effective amount of one or more compounds selected from a compound of formula 2.16, namely glyphosate, and/or a compound of formula 2.33, namely glyphosate-trimethylsulfoxonium (page 11, line 26; page 15, last line; page 16, line 1; page 19, last two lines), as illustrated in greater detail hereinbelow:



(2.16)

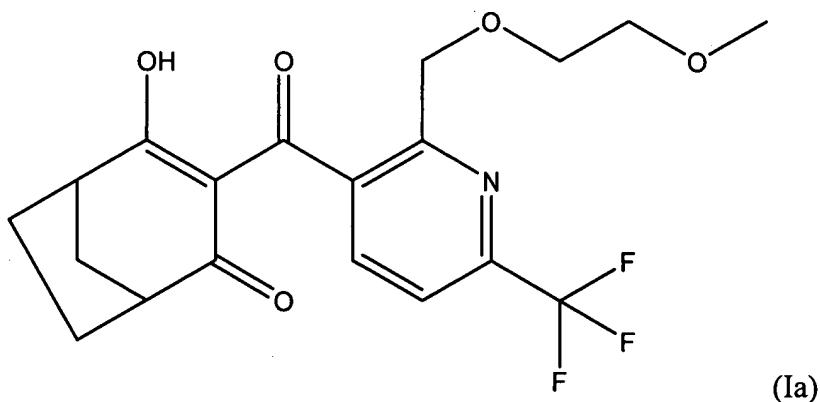


(2.33)

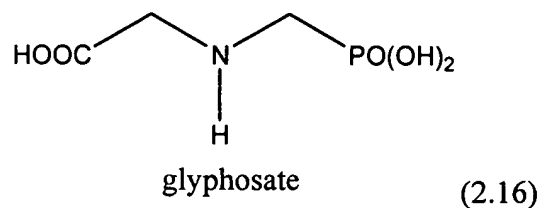
(abstract; page 1 in its entirety; page 11, lines 25 and 26; page 15, last line; page 16, line 1; page 19, last two lines; page 25, lines 9-13; page 26, lines 16-26; page 200, Table 19; page 203, lines 1, 3 and 17; page 235, claim 1; page 244, lines 31-33; page 249, line 1; page 252, last two lines).

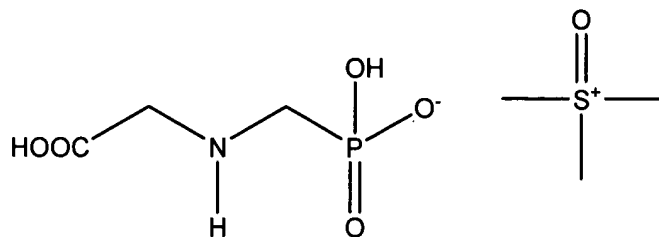
3. Claim 1 is rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent 6,890,885 (hereinafter the Rüegg '885 patent).

With respect to claim 1 of the instant application, the Rüegg '885 patent discloses a synergistic herbicidal composition (abstract) for selective weed control in crops of useful plants, which include, but are not limited to, maize and cereal (column 1, lines 10-11; column 23, lines 18-33), wherein said synergistic herbicidal composition comprises, as an active ingredient, a mixture of: (1) a herbicidally effective amount of a compound of formula Ia (column 24, lines 34-45; column 177, lines 50-66, Table 19; column 179, lines 1-20, Table 19 continued; claims 1 and 5), as illustrated in greater detail hereinbelow:



or an agronomically tolerable salt thereof (column 10, line 38; claim 1); and (2) a synergistically effective amount of one or more compounds selected from a compound of formula 2.16, namely glyphosate, and/or a compound of formula 2.33, namely glyphosate-trimethylsulfoxonium (column 14, lines 1-10; column 17, lines 40-48; claims 1 and 5), as illustrated in greater detail hereinbelow:





glyphosate-trimethylsulfoxonium (2.33)

(abstract; column 1, lines 8-50; column 10, lines 38-40; column 14, lines 1-10; column 17, lines 40-48; column 22, lines 26-32; column 23, lines 18-33; column 24, lines 34-45; column 177, lines 50-66, Table 19; column 179, lines 1-20, Table 19 continued; column 181, line 57; column 182, line 7; claims 1 and 5).

Conclusion

Claim 1 is rejected because the claimed invention is anticipated since each and every element of the claimed invention, as a whole, is disclosed in the cited prior art references.

Remarks

As a courtesy, it is brought to the attention of Syngenta Crop Protection, which is the common assignee of both the instant application and U.S. Patent 6,890,885 (hereinafter the Rüeegg '885 patent), that the compound of formula Ia, as recited within claim 1 of the Rüeegg '885 patent, contains a typographical error in that a nitrogen is missing within the aromatic ring of said compound of formula Ia thereby incorrectly reciting a benzene ring, as opposed to a pyridine ring, which should alternatively be recited as evidenced in the supporting specification (see e.g., abstract; column 1, lines 15-24 and 40-50; column 24, lines 34-45; column 177, lines 50-66, Table 19; column 179, lines 1-20, Table 19 continued). As a result, Syngenta Crop Protection may want to consider filing a certificate of correction so as to remedy the aforementioned typographical error associated with the model compound of formula Ia of the Rüeegg '885 patent.

Pertinent Prior Art

U.S. Patent 6,083,878 is made of record and considered pertinent to the Applicant's disclosure, but is not however currently relied upon in construing the claim rejections as set forth hereinabove.

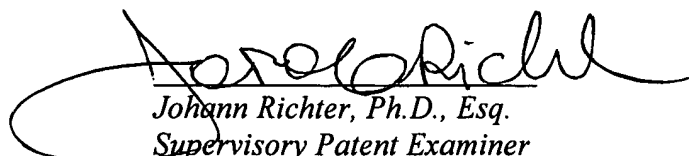
Contact Information

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to David P. Stitzel, M.S., Esq., whose telephone number is 571-272-8508. The Examiner can normally be reached on Monday-Friday, from 7:30AM-6:00PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Johann Richter, Ph.D., Esq., can be reached at 571-272-0646. The central fax number for the USPTO is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published patent applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished patent applications is only available through Private PAIR. For more information about the PAIR system, please see <http://pair-direct.uspto.gov>. Should you have questions about acquiring access to the Private PAIR system, please contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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